

3. Applicant filed a response to the first non-final Office Action on April 19, 2007, without extension of time.
4. The USPTO mailed a final Office Action on July 11, 2007.
5. Applicant filed a response to the final Office Action on August 28, 2007, without extension of time.
6. The USPTO mailed an advisory action on October 31, 2007.
7. Applicant filed a Request for Continued Examination (RCE) on November 26, 2007. Applicant's response was filed after the three-month due date, resulting in Applicant causing a delay of 46 days. See 37 C.F.R. § 1.704(b).
8. The USPTO mailed a non-final Office Action on January 10, 2008.
9. Applicant filed a response to the non-final Office Action on March 14, 2008, without extension of time.
10. The USPTO mailed an final Office Action on June 20, 2008.
11. Applicant filed a response to the final Office Action on August 29, 2008, without extension of time.
12. The USPTO mailed an advisory action on September 19, 2008.
13. Applicant filed a RCE on November 19, 2008. Applicant's response was filed after the three-month due date, resulting in Applicant causing a delay of 60 days. See 37 C.F.R. § 1.704(b).
14. The USPTO mailed a Notice of Allowance on February 6, 2009.
15. Applicant paid the issue fee on April 24, 2009.
16. The application issued as U.S. Patent No. 7,463,280 on June 2, 2009.
17. The patent is not subject to a terminal disclaimer.

The issued patent reflects a patent term adjustment that extends the term of this patent by 717 days. Applicant respectfully submits that this amount is incorrect because it does not take into account the USPTO's entire delay in issuing the patent past the three year pendency date of the application. Applicant further submits that the correct patent term adjustment should reflect an additional 290 days, i.e., the term of the patent should be adjusted by a total patent term adjustment of 1,007 days.

Pursuant to 37 C.F.R. §§ 1.702(a)(1) and 1.703(a)(1), Applicant is entitled to an adjustment in patent term equal to "[t]he number of days, if any, in the period beginning on the day after the date that is fourteen months after the date on which the application was filed . . . and ending on the date of mailing of . . . an action under 35 U.S.C. 132." 37 C.F.R. § 1.703(a)(1). As set forth above in paragraph (2), 717 days of patent term adjustment corresponds to the delay by the USPTO in issuing a first Office Action. That is, the first Office Action was mailed February 9, 2007, and that date was 823 days after September 8, 2003 (i.e., the day that was fourteen months after the date on which the application was filed).

However, the 823 days of adjustment must be reduced by Applicant's delay pursuant to 37 C.F.R. § 1.704. Specifically, as set forth above in paragraphs (7) and (13), Applicant's delay in filing the responses after the date that is three month's from the mailing date of the Office Action was 106 days in total (46 days + 60 days). This combined delay must be subtracted from the 823 days, thus, resulting in 717 days of patent term adjustment.

Pursuant to 37 C.F.R. §§ 1.702(b) and 1.703(b), Applicant is also entitled to an adjustment in patent term equal to "the number of days, if any, in the period beginning

on the day after the date that is three years after the date on which the application was filed . . . and ending on the date a patent was issued, but not including the sum of [certain periods]." 37 C.F.R. § 1.703(b). According to 37 C.F.R. § 1.703(b)(1), such a period includes the period beginning on the date on which a request for continued examination (RCE) filed under 35 U.S.C. 132(b). In this case, the application was filed on September 8, 2003, which is more three years before the application's issued date of June 2, 2009. However, in view of the RCE filed on November 26, 2007, the adjustment should exclude any period beginning from the filing date of the RCE dated November 26, 2007. As such, the adjustment in patent term under 37 C.F.R. § 1.703(b)(1) should only include the period beginning on the day after the date that is three years after the filing date of the application (September 8, 2003) and ending on the date that the RCE was filed (November, 26, 2007), which amounts to 444 days.

However, 37 C.F.R. § 1.703(f) indicates that the patent term "shall be adjusted for the sum of the periods calculated under paragraphs (a) through (e) of this section, to the extent that such periods are not overlapping." Accordingly, Applicant is not entitled to double count the period from September 8, 2006 (the three-year pendency date) to February 9, 2007 (the mailing date of the first Office Action), as that period overlaps with the period previously calculated pursuant to 37 C.F.R. § 1.703(a)(1). That is, 154 days (i.e., the time period of September 8, 2006 to February 9, 2007) must be subtracted from the 444 days discussed above. The resulting patent term adjustment due to the issuance of the patent occurring past the three-year pendency date is an additional 290 days, which when added to the 717 days of patent term adjustment discussed above, results in a total patent term adjustment of 1,007 days.

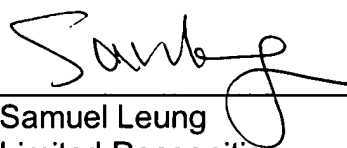
As set forth above, the issued patent reflects a patent term adjustment that extends the term of this patent by 1007 days. However, for the foregoing reasons, Applicant submits that the patent is entitled to an additional 290 days of patent term adjustment, i.e., a total patent term adjustment of 1,007 days.

Please charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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Dated: June 25, 2009

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